

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 14, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: Bob Bartholomew

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Ruth Kent, BA03:106, owner
Bob Sokolowicz, BA03:106, neighbor
Dennis Zahnow, BA03:113, owner
Terry VanLare, BA03:113, owner
Dan & Kim Burkwald, BA03:110, owners
David Richards, BA03:108, petitioner
Sue Laabs
Rich Hennecke, BA03:112, petitioner
Chris Petherick & Susanne Shunta, BA03:112, owners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann: *I make a motion to approve the Summary of the Meeting of December 10, 2003.*

The motion was seconded by Ms. Voelker and carried unanimously.

NEW BUSINESS:

BA03:022 LEROY ZIMDARS (Held in abeyance from April 9, 2003, April 23, 2003, July 9, 2003, September 10, 2003 and November 12, 2003)

Ms. Voelker: *I make a motion to adjourn the meeting until February 25, 2004, as requested by Waukesha County Corporation Counsel to allow*

additional time for Waukesha County Corporation Counsel and Attorney Kathy Gutenkunst, petitioners' attorney, additional time to finalize the terms of a possible settlement in this matter.

The motion was seconded by Mr. Schultz and carried unanimously.

BA03:106 STEVE & RUTH KENT (Nelson Remodeling)

Mr. Ward:

I make a motion to adopt the staff's recommendation, with the conditions and for the reasons as stated in the Staff Report, with the following modifications to the conditions and reasons:

Condition No. 4 shall change to read: "The lots (Lot 1 and Lot 2 of the Amended Plat of Oakdale and the parcel north of Road "J") must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc and the Waukesha County Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to June 1, 2004. Even though combining of the lots has not taken place, a Zoning Permit may be issued subject to all other conditions of this approval being met and the petitioners also presenting a \$25,000 Letter of Credit secured by a Security Interest and/or a Mortgage against the properties. The Letter of Credit shall be to the benefit of Waukesha County to ensure the addition to the residence may be razed at the cost of the petitioners if the Certified Survey Map is not recorded by June 1, 2004. The Letter of Credit shall be submitted to Waukesha County Department of Parks and Land Use and the Security Interest shall be recorded with the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit. The Letter of Credit and Security Interest shall be drafted and recorded to the satisfaction of Waukesha County Corporation Counsel with all costs paid by the petitioners". The reasons for approval should include, "The Letter of Credit of \$25,000 is required to ensure the petitioner proceed with and record a Certified Survey Map combining all lots. It is important because the proposed construction is right on the lot line and if a Certified Survey map is not recorded the \$25,000 is necessary for the County to raze the improvements." Condition No. 5 shall also change to read: "Prior to the issuance of a Zoning Permit, the 106.7 sq. ft. metal shed, which was suggested to be removed by the Town Plan Commission, shall be removed. The 41 sq. ft. pump house (shed) shall be reduced in height and size to just accommodate the appliances inside, the pump and pressure tank."

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The proposed additions must be located at least 13.17 ft. from the east side lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the east lot line as the overhangs exceed two (2) ft. in width.
- 2.) Prior to the issuance of a Zoning Permit, a complete set of Building Plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 3.) Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the existing structures and the additions to the residence including all appurtenances, in conformance with the above conditions, must be prepared by a Registered Land Surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 4.) The lots (Lot 1 and Lot 2 of the Amended Plat of Oakdale and the parcel north of Road "J") must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc and the Waukesha County Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
- 5.) Prior to the issuance of a Zoning Permit, the non-conforming 41 sq. ft. shed must be removed from the property.
- 6.) If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a Registered Landscape Architect, Surveyor, or Engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the additions do not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on storm water and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The existing residence is only non-conforming to the offset requirement by 3.5 ft. Requiring the petitioner to construct a new residence or relocate the existing residence to a conforming location would be unreasonable. The request as conditioned will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and, therefore, is in conformance with the purpose and intent of the Ordinance.

BA03:108 ARTHUR RICHARD FARMS, INC. (David Richards)

Ms. Voelker: *I make a motion to hold the hearing in abeyance until February 11, 2004, to allow the Waukesha County Corporation Counsel to research the applicability of a variance for the request, as recommended in the “Memorandum” by staff.*

BA03:109 TERRY VAN LARE (Oconomowoc Landscape Supply)

Ms. Voelker: *I make a motion to adopt the staff’s recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report with the addition of the following reason as mentioned by the Town of Oconomowoc Plan Commission, “A very prominent sign on a busy street will enhance safety in locating the Landscape Center, which will also include the Town’s Recycle Center”.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff’s recommendation was for approval, with the following conditions:

- 1.) The sign must not be located any closer than 20 ft. from the road right-of-way of S.T.H. “67” and C.T.H. “K”.
- 2.) The sign must not exceed 20 ft. in height and the face of the sign shall not exceed 60 sq. ft. in size, as proposed.
- 3.) If the design of the sign changes from the design submitted to the Planning and Zoning Division staff, see attached (Exhibit “A”), a new design shall be reviewed and approved by the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
- 4.) Prior to the issuance of a Zoning Permit, a scaled Site Plan showing the location of the proposed sign, in conformance with the above conditions, must be prepared by a registered land surveyor, landscape architect or engineer and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. S.T.H. “67” and C.T.H. “K” both incorporate a higher volume of traffic at higher speeds than local roads, therefore, a larger illuminated sign would be required to attract attention to the operation, which benefits from on-site sale of materials. Therefore, the request as conditioned will not adversely affect the surrounding property owners and would not be contrary to the public interest and, therefore, is in conformance with the purpose and intent of the Ordinance.

BA03:112 CHRIS PETHERICK/SUSANNE SHUNTA (Rich Hennecke)

Mr. Schultz:

I make a motion to adopt the staff's recommendation, with the condition stated in the Staff Report and for the following reasons: Approval of the requested Variance allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. Further, the petitioner is not proposing any external expansions to the residence and will, in fact, improve the external appearance by replacing all existing windows. Accordingly, the request will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and welfare. Therefore, the request, as approved, is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following condition:

- 1.) A Zoning Permit must be obtained from the Waukesha County Department of Parks and Land Use prior to construction.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The petitioner is proposing to increase the usefulness of the existing structure within the existing footprint and floor area. The petitioner will improve the appearance by replacing exterior windows, but will keep within the general desirability of the neighborhood, as no expansions will be made. The request as conditioned will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and, therefore, is in conformance with the purpose and intent of the Ordinance.

BA03:113 DENNIS ZAHNOW

Ms. Voelker:

I make a motion to adopt the staff's recommendation, with the conditions and reasons as stated in the Staff Report, with the exception of the following modifications to the conditions: Condition No. 6 and No. 7 shall be combined and should be moved to be Condition No. 2, the existing Condition No. 2 shall be Condition No. 3. The new Condition No. 2 (staff report-Condition No. 6 & 7) shall be changed to read, "The lots shall be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town of Oconomowoc and the Planning and Zoning Division staff and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit. The Certified Survey Map must be submitted for review by March 1, 2004. The Certified Survey Map must be approved and the after-the-fact Zoning Permit must be issued prior to May 1, 2004, or citations may be issued. If the properties cannot be combined by Certified Survey Map approval, the proposal shall be re-heard by the Board

of Adjustment under old business.” The new Condition No. 3, staff report-Condition No. 2, shall be changed to read, “Floor area ratio shall not exceed 15%, 1,982 sq. ft. The footprint must remain the same.”

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff’s recommendation was for approval, with the following conditions:

- 1.) Prior to the issuance of a Zoning Permit, a complete set of Building Plans must be submitted to the Planning and Zoning Division staff for review and approval.
- 2.) Floor area ratio shall not exceed 15%, 1,982 sq. ft. The footprint must remain the same prior to any construction taking place.
- 3.) Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the after-the-fact construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
- 4.) A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
- 5.) Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the residence, detached garage and deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 6.) The lots shall be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town of Oconomowoc and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed’s office, prior to the issuance of a Zoning Permit.
- 7.) A Certified Survey Map must be submitted for review and approval by March 1, 2004. An after-the-fact Zoning Permit must be issued prior to May 1, 2004, or citations may be issued..

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance and Special Exception allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The petitioner is proposing to obtain after-the-fact approval to re-construct the walls as part of an original Zoning Permit to replace the roof. The residence is reasonable in size, located the greatest distance from the waterway as possible and is located just outside of the platted road right-of-way and just within the established road right-of-way. The construction remains within the general desirability of the neighborhood. The request as conditioned will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and, therefore, is in conformance with the purpose and intent of the Ordinance.

BA03:110 DANIEL & KIM BURKWALD

Mr. Tarmann *I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The residence and attached garage, including the deck and patio, and any other appurtenances such as stairways, must be located at least 75 ft. from the Ordinary High Water Mark of North Lake, 50 ft. from the 100-year floodplain and must be located at least 17.17 ft. from the north and south lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the lake, and 100-year floodplain as the overhangs exceed two (2) ft. in width. The floor area ratio must not exceed 15%.
2. The natural grade of the closest point of the proposed additions and decking to the 100-year floodplain and decking must be at least 3 ft. above the 100-year floodplain elevation. The elevations shall be shown on a scale Plat of Survey.
3. The 68 sq. ft. non-conforming shed must be removed, prior to the expiration date of the Zoning Permit to be issued for the residence and attached garage.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, decks, patios and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. A detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed residence does not result in adverse drainage onto adjacent properties or the road. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or

the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan, including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variance from the 100-yr. floodplain setback, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. Our Department does not feel that the proposed residence would negatively impact the natural resources or surrounding area, due to the construction being required to be located greater than the required shore setback and more than 3 ft. above the 100-year floodplain elevation. Therefore the proposal, as conditioned, would be in conformance with the spirit and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None

ADJOURNMENT:

Ms. Voelker *I make a motion to adjourn this meeting at 8:55 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment